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AZERBAIJAN COMPETITIVENESS AND TRADE (ACT) PROJECT

*IMPLEMENTING POTENTIAL GATS COMMITMENTS ON
TELECOMMUNICATIONS AND INFORMATION
TECHNOLOGY*

DISCLAIMER

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Backgrounds and Objectives

The Republic of Azerbaijan is negotiating accession to the World Trade Organization (“WTO”). When it becomes a member of the WTO, Azerbaijan will be bound by the General Agreement on Trade in Services (“GATS”) and, under that Agreement, assume certain obligations regarding regulation of telecommunications services.

Part I of this paper describes the general framework created by the GATS, applicable without regard to specific commitments, focusing on how its rules apply to regulation of telecommunications services. Part II describes the GATS rules applicable if Azerbaijan includes telecommunications services in its Schedule of Specific Commitments. Part III compares Azerbaijan’s current laws with its potential GATS commitments and indicates gaps in the current legal framework.

This paper assumes that Azerbaijan will make full market access and national treatment commitments for all basic and value-added telecom services, although there may be a phase-in of those commitments. This would include the removal of all monopoly rights of Aztelekom and Baktelekom (the “Incumbent Operators”). It also assumes that Azerbaijan will make additional regulatory commitments, incorporating the “Reference Paper” into its Schedule of Commitments. The paper refers to the Ministry of Communications and Information Technology (“MCIT”) as the regulator.

Conclusion. Azerbaijan’s legal framework incorporates some of the GATS obligations, but there are significant gaps, particularly with respect to potential commitments under the Reference Paper. Some of the gaps may be due to the fact that the laws and decrees are very general and refer in many places to regulations to be issued by MCIT, which has not yet done so. The major areas where work is needed are competition safeguards, interconnection, access to the public switched network and independence of the regulator.

GATS’ General Rules and the Annex on Telecommunications.

The GATS establishes general rules that apply to all service sectors, whether or not the Member has made any specific commitments to allow foreign competition in services. The Annex on Telecommunications imposes additional requirements with respect to access to and use of the public switched telecommunications network (PSTN). The GATS and the Annex on Telecommunications require:

- non-discrimination
- transparency
- competition safeguards
- domestic regulation

Non-discrimination means that a Member may not discriminate among services or service suppliers in the application of its laws or regulations. This principle, set forth in Article II of the GATS, is called “Most-Favored-Nation Treatment” (MFN). For example, if foreign companies operate in Azerbaijan, the government cannot treat a French telecommunications service provider better than it treats a service provider from Greece.

Transparency is a key element of the international trading system, which applies in many ways in the

telecommunications sector. GATS Article III requires a WTO Member to promptly publish, or make otherwise publicly available, all relevant laws, rules, regulations and administrative guidance relating to services generally. Thus MCIT must make publicly available all of its rules and regulations and cannot take action based on “internal guidance” or regulations that are not publicly available.

The GATS Annex on Telecommunications imposes additional requirements with respect to transparency in telecommunications services. It requires that conditions affecting access to and use of the PSTN are publicly available. “Publicly available” means that the information is available in a widely-distributed publication or on a web-site or can be obtained or inspected at specified locations.

This includes tariffs and conditions of service, technical interfaces, standards bodies, conditions for attachment of terminal equipment to the PSTN and all licensing criteria. Under this provision, for example, MCIT must require Incumbent Operators, as well as other providers of PSTN to make their tariffs and other service conditions publicly available, as well as any standards for terminal equipment and attachment of the equipment to their network.

Adoption of competition safeguards is required by GATS Article VIII and the Annex on Telecommunications. Article VIII is relevant while Incumbent Operators retain a monopoly on certain telecom services. It requires a WTO Member to ensure that a monopoly provider observes the MFN obligation with respect to the provision of its monopoly services in its dealing with foreign suppliers of any services, not just telecommunications services. As a result of Article VIII obligations, the Government of Azerbaijan has to ensure that Incumbent Operators do not discriminate in their provision of services to hotels operated by service suppliers from different WTO members or internet service providers from different WTO members.

In addition, the monopoly supplier is not allowed to abuse its monopoly position when competing with other telecommunications service suppliers. For example, if an Incumbent Operator provides domestic data services, which are subject to competition from other providers, Incumbent Operators cannot use its profits from its monopoly operations to subsidize its domestic data services.

The Annex on Telecommunications also provides for competition safeguards by requiring that service providers from WTO Members (providing service for which Azerbaijan has made market access commitments) have access to and use of the PSTN on reasonable and non-discriminatory terms for the supply of services which are open to foreign competition. The Annex on Telecommunications imposes specific requirements on access to and use of the PSTN. Other operators and service suppliers must be able to:

- I. purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's services;
- II. interconnect private leased or owned circuits with public telecommunications transport networks and services or with circuits leased or owned by another service supplier; and

- III. use operating protocols of the service supplier's choice in the supply of any service, other than as necessary to ensure the availability of telecommunications transport networks and services to the public generally.

Azerbaijan, for example, may agree to allow foreign companies to provide domestic data services, such as internet services. As a result of the GATS Annex on Telecommunications, these foreign internet service providers must have access to the Incumbent Operators' networks on reasonable and non-discriminatory terms and conditions. In addition, the Internet service providers must be able to attach terminal equipment to the network and interconnect private leased circuits with the public switched network. This obligation goes to the services and network of Incumbent Operators, as well as to the networks of any new entrants who will provide public switched telecommunications transport networks and services.

Domestic regulation is another key element of the GATS. While most of the regulatory obligations only apply in sectors in which a Member has made specific commitments (and will therefore be described in Part II), Article VI of the GATS requires that each Member maintain judicial, arbitral or administrative tribunals or procedures which provide, upon request, prompt review of administrative decisions affecting the supply of services. These tribunals or procedures must have the power to impose appropriate remedies. Furthermore, the procedures must be objective and impartial. Thus, Azerbaijan must maintain a tribunal or procedure at which a service supplier can challenge a decision of MCIT and seek appropriate remedies. If that review mechanism is within MCIT, it must in fact provide for an objective and impartial review.

Specific Commitments on Telecommunications

Each WTO Member establishes the scope of permitted market access and the specific treatment to be accorded foreign service suppliers in its Schedule of Specific Commitments, which is incorporated into the GATS. The Schedule is divided by service sector and by "mode of delivery."

"Telecommunications Services" is part of the Schedule of Specific Commitments. It is divided into numerous subsectors. In general, the subsectors cover (i) "basic" services, which involves the real-time transmission of customer supplied information without change in form or content, and (ii) "enhanced" services, which are generally transmissions over the PSTN which are computer-enhanced.

With respect to basic services, WTO Members have generally agreed that a listed service, unless otherwise stated, can be provided through any technological means and covers:

- local, long distance and international service
- facilities-based or resale-based supply and
- public or non-public (closed user group) services

As noted, this discussion assumes that Azerbaijan will make full market access and national treatment commitments for all basic and value-added telecom services, although there may be a phase-in of those commitments. It also assumes that Azerbaijan will make additional regulatory commitments, incorporating the "Reference Paper" into its Schedule of Commitments.

Rules Applicable to Specific Commitments. Like the general GATS' rules, these additional rules focus on non-discrimination, transparency, competition safeguards and domestic regulation.

Non-Discrimination. As noted above, Azerbaijan must accord national treatment to foreign services and service suppliers in the telecommunications sector. This means that a foreign service or service supplier must receive treatment no less favorable than that accorded to Incumbent Operators (except in areas in which Incumbent Operators maintain a legal monopoly) or other national services and services suppliers. If international services are open to competition, MCIT cannot limit access to Azerbaijan-owned companies.

Art. XI of the GATS requires that a different type of non-discrimination. In sectors where Azerbaijan makes specific commitments, Art. XI prohibits restrictions on international transfers and payments for current transactions relating to those specific commitments.

Non-discrimination is also reflected in the Reference Paper. It requires that the decisions of and the procedures used by the regulator be impartial with respect to all market participants. This makes clear that the regulator cannot favor the Incumbent Operators and must provide all service suppliers with similar treatment.

Transparency. The Reference Paper requires that MCIT make publicly available all the licensing criteria, the period of time which MCIT normally requires to reach decisions on license applications and the terms and condition of individual licenses. Upon request from an applicant whose license is denied, MCIT must provide the reasons for the denial.

The Reference Paper does not require MCIT to set a deadline by which license decisions must be made, but rather to establish a time period that is "normally" required to reach licensing decisions. A WTO Member does not violate its commitments if it occasionally exceeds the "normal" period.

Transparency is an element of Reference Paper obligations regarding interconnection. The Reference Paper requires that procedures applicable to obtaining interconnection to Incumbent Operators' networks be publicly available. Incumbent Operators also must publish a reference interconnection offer or make public all their interconnection agreements.

Competition Safeguards. The Reference Paper contains significant competition safeguards to prevent a "major supplier" from abusing its market position. For Azerbaijan, each Incumbent Operator will be a major supplier, a company that controls essential facilities¹ or has the ability to materially affect the terms of participation in the market for telecommunications services. Azerbaijan must implement measures to prevent anti-competitive practices by Incumbent Operators. The Reference Paper provides some examples of anti-competitive practices – cross-subsidization, improper use of information, failure to make available information about the network -- but this list is not exclusive of the types of behavior that would be anti-competitive and should be prohibited.

Other measures to prohibit anti-competitive conduct should be adopted, such as requiring the structural

¹ Essential facilities are those that cannot easily be economically or technically duplicated.

separation of various lines of business of Incumbent Operators or non-structural accounting separation. Protecting proprietary information may mean adopting prohibitions on unauthorized release of competitor's business and marketing plans, supported by adequate penalties. Measures to require public availability of technical and commercial information could refer to standards, network changes, additions or deletions, processing requests, timing changes and billing arrangements.

In addition, the Reference Paper requires a Member to have in place measures that prevent joint or collusive behavior as a result of the reference to "suppliers who, alone or together, are a major supplier." This can be accomplished through regulations of the MCIT or through more general competition law.

Requiring interconnection is a fundamental principle of the Reference Paper. Interconnection is defined very broadly to cover all types of telecommunications services that are included in a WTO Member's Schedule. MCIT must ensure that Incumbent Operators, as the major suppliers, provide interconnection:

- At any technically feasible network point
- under non-discriminatory terms, conditions and rates
- of a quality no less favorable than provided for its own like services, those of non-affiliated suppliers or subsidiaries or other affiliates
- in a timely fashion
- on non-discriminatory terms, conditions and rates
- at cost-oriented rates
- sufficiently unbundled so that the supplier need not pay for network components it does not need
- on request, at network termination points other than those offered most users, subject to reasonable charges.

In practice, MCIT must ensure that Incumbent Operators not discriminate in location, information, ordering procedures, ordering intervals, provisioning intervals, billing arrangements, maintenance and testing, characteristics of interconnection, credit terms and warranties or guarantees of service.

The Reference Paper does not define terms such as "reasonable," "unbundled," "cost-oriented," "timely," etc. A WTO dispute settlement panel, established to hear a dispute between the United States and Mexico regarding the rates charged by Telmex (the incumbent carrier) for international termination, interpreted "cost-oriented" to mean "related to the costs incurred in supplying the service." It said that the term "reasonable" suggested that the interconnection rates should be "suitable to the circumstances or purpose", i.e. that they should reflect the overall objectives of the provision that the rates represented the costs incurred in providing the service.

The panel concluded that Telmex did not interconnect with U.S. suppliers at cost-oriented rates. It accepted evidence provided by the United States (and not contradicted by Mexico) that the same network elements used to connect U.S. suppliers, when used for domestic interconnection, cost on average 75% less. The panel found that "a difference of over 75% above Telmex's demonstrated cost-ceiling is unlikely to be within the scope of regulatory flexibility allowed by the notion of 'cost-oriented rates' in the Reference Paper."

Azerbaijan must establish an independent body (which could be MCIT) to resolve disputes between Incumbent Operators and its competitors regarding the appropriate terms, conditions and rates for interconnection. This interconnection dispute settlement mechanism must be available upon request and must make decisions “within a reasonable period of time.” The manner of resolving interconnection disputes is not dictated, but can be by reference to terms, conditions or rates already established or based on the facts presented to the decision-making body.

Domestic Regulation.

In sectors in which a WTO Member has made specific commitments, the GATS imposes additional obligations with respect to domestic regulation. Article VI requires that:

- all laws, rules, regulations, administrative procedures and other governmental measures affecting the scheduled service sectors be administered in a reasonable, objective and impartial manner;
- if licensing is required, the relevant authority must inform the applicant of the decision concerning the application “within a reasonable period of time” after the application is received and also, upon request, about the status of the application; and
- all qualification procedures, technical standards and licensing requirements must be
 - based on objective and transparent criteria, such as competence and ability to supply the scheduled service;
 - not more burdensome than necessary to ensure the quality of the service; and
 - not in themselves a restriction on the supply of the scheduled service.

The standards of relevant international organizations (such as the International Telecommunication Union and the International Standards Organization) are taken into account in determining whether technical standards, licensing procedures and qualification procedures meet the GATS requirements.

The Reference Paper focuses specifically on two areas that are often the subject of regulation – universal service and allocation and use of scarce resources. With respect to universal service, it is clear that each WTO Member has the right to define the scope of universal service and the specific means of achieving universal service. The general GATS regulatory disciplines govern the creation and administration of universal service obligations – they must be transparent, non-discriminatory, competitively neutral and not more burdensome than necessary for the kind of universal service adopted.

Scarce resources include radio spectrum, telephone numbers and rights of way. The same general principles apply to procedures for the use and allocation of these resources. The allocation must be done in an objective, timely, transparent and non-discriminatory manner. In addition, the current state of allocated frequencies must be made publicly available, though allocations for government use do not have to be specified.

The final provision of the Reference Paper deals with the regulatory body. Although a WTO Member does not have to create a particular kind of regulatory body, whatever government entity is charged with regulating the telecommunications sector must be separate from and not accountable to an operator of

telecommunications services. In addition, the regulator must act impartially with respect to all operators.

Comparison of GATS Obligations and Azerbaijan's Current Legal Framework

The following chart sets out a comparison of the GATS requirements described in Part II and Azerbaijan's current legal framework. The Azerbaijan legal framework reviewed consists of:

- Law on Telecommunications of 2005 ("Telecom Law")
- Anti-Monopoly Law ("Competition Law")
- Regulation on MCIT ("MCIT Law")
- Regulations for Utilization of General Communications Network ("Interconnection Regulation")
- Regulation for Allocation and Utilization of Number Resources ("Numbering Regulation")
- Presidential Decree No. 782 "On Improving the License Issuance Rules for Some Types of Activity" (2002) ("Licensing Decree")
- Information on Licensing in Communications ("Licensing Procedures")
- Law on Protecting Foreign Investment
- Presidential Decree on Universal Service (NOT AVAILABLE)

GATS OBLIGATIONS	RELEVANT AZERBAIJANI LAWS	COMPARATIVE ANALYSIS
<p>Non-discrimination</p> <p>Most-Favored Nation (MFN)</p> <p>National Treatment</p>	<p>Licensing Law 1.4. Foreign juridical and natural persons, as well as affiliated societies and representatives of foreign juridical persons shall obtain a license to implement a certain type of activity in accordance with this Regulation within the scope of their powers, in case there is no intergovernmental agreement defining the recognition in the Republic of Azerbaijan of the license obtained in order to fulfill the types of activities reflected in this Regulation.</p> <p>Telecom Law 3.1.1 Telecommunication activity is carried out upon following principles: protection of equality and legal concerns of providers, operators and users.</p> <p>Telecom Law 11.1 Operators, providers and other legal and physical entities operating in the sphere of telecommunications, also manufactures and suppliers of equipment are deemed equally righted entities in</p>	<p>The Licensing Law makes clear that foreign persons may obtain licenses, while the Telecom Law provides for non-discriminatory treatment.</p>

GATS OBLIGATIONS	RELEVANT AZERBAIJANI LAWS	COMPARATIVE ANALYSIS
	<p>the case of establishment and developing telecommunications systems, in rendering services.</p> <p>Telecom Law 47.4. Involvement of foreign investments in development of telecommunication and their protection is assured according to corresponding legislation of the Republic of Azerbaijan and international treaties it supports.</p>	
Market Access		
Assumes market access is available on accession or shortly thereafter, at which time all services (voice, data, internet, email, etc.) can be provided through any means of technology and on a facilities-basis and through resale.	<p>Telecom Law 23 classifies services as:</p> <p>Telephone</p> <p>Cellular</p> <p>Paging</p> <p>Radio trunk and wireless telephone</p> <p>Domestic and international telecommunication service</p> <p>Internet service</p> <p>TV and radio broadcasting</p> <p>Universal telecommunication</p> <p>Other telecommunication services as provided by the legislation</p>	The list is not technology neutral and does not mention resale. There is no indication in the Telecom Law how licenses are issued for these services.
Transparency of Government Actions		
Publish all relevant laws, rules, regulations and administrative guidance		No provision found requiring publication
Publish all licensing criteria and	Licensing Decree sets out required documents and	Licensing Decree

GATS OBLIGATIONS	RELEVANT AZERBAIJANI LAWS	COMPARATIVE ANALYSIS
normal period of time required to act on license applications - Reference Paper obligation	<p>experience needed, as well as time required to act on application</p> <p>Licensing Procedures set out additional criteria</p> <p>Interconnection Regulation 2.1 requires operator that wants to use the resources of the “general communication network” to receive a license from MCIT.</p>	<p>sets outs required documents and experience needed, as well as time required to act on application</p> <p>Licensing Procedures set out additional criteria</p> <p>It is not clear whether there are criteria for the license required by the Interconnection Regulation.</p>
Provide reasons for denial of license Reference Paper obligation	Licensing Decree 2.7. In case the applicant is rejected to issue a license he is informed of it in written form within 5 days, including the reasons for rejection	Conforms to Reference Paper
Information on standards setting bodies		No provision found
Payments and Transfers		
A Member shall not apply restrictions on international transfers and payments for current transactions relating to its specific commitments	Law on Protecting Foreign Investment 14 After payment of respective taxes and charges transfer of profits of foreign investors and other sums, including compensation of losses in foreign currency obtained legally in connection with investments is guaranteed.	Conforms to GATS Art. XI
Regulation of Operators of PSTN		

GATS OBLIGATIONS	RELEVANT AZERBAIJANI LAWS	COMPARATIVE ANALYSIS
<p>At all times, service providers covered by specific commitments must have</p> <p>access to and use of PSTN Operators' network on reasonable and non-discriminatory terms and conditions</p> <p>ability to purchase or lease and attach terminal or other equipment which interfaces with the network and which is necessary to supply a supplier's services</p> <p>ability to interconnect private leased or owned circuits with the PSTN or with circuits leased or owned by another service supplier;</p> <p>ability to use operating protocols of the service supplier's choice</p>	<p>According to Telecom Law 11.2, a dominant operator has the following obligations:</p> <p>11.2.1 provide to other operators rendering similar services the equal opportunity for the purposes of interconnection as regards connection to networks and traffic exchanges</p> <p>11.2.2 shall not refuse to enter into a contract for connection to its network of other operators/providers for the purpose of interconnection except the cases provided for by legislation</p> <p>11.2.3 shall lease its lines through its network to other operators/providers on the basis of general agreement except the cases provided for by legislation</p> <p>Telecom Law 32.3 Providers have the following rights: 32.2.1 to connect to the telecommunications network of public use on the basis of the contract made with the relevant operator and render services.</p> <p>Telecom Law 20.5 Corporate telecommunications networks may be created in the form of intra-enterprise, in-production and technological telecommunication networks. NOTE: It is not clear whether this permits interconnection or leased lines between private networks.</p>	<p>These provisions only apply to dominant operators.</p> <p>No provision obligating other PSTN operators.</p> <p>No provision imposing these obligations with respect to non-telecom service providers seeking access to the PSTN.</p> <p>No provision regarding operating protocols or obligations regarding terminal equipment.</p>
<p>Operators of PSTN must make public tariffs and conditions of service, technical interfaces, conditions for attachment of terminal equipment to the PSTN</p>	<p>Telecom Law 20.2 Telecommunications networks of individuals and legal entities may be connected to the telecommunications network of public use on the basis of the relevant agreement.</p>	<p>No provision found requiring publication of specified information.</p>

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Major Supplier		
<p>Defined as a company that controls essential facilities or has the ability to materially affect the terms of participation in the market for telecommunications services</p> <p>Reference Paper Provision</p>	<p>Competition Law 4 – dominating position - exceptional position of economic subject which allows, using its economic potential, to influence competition and so to restrict access of other market participants to the market. Position of the economic subject with the share in the market exceeding 35 percent or other ultimate figure specified by legislation is regarded as dominating</p>	<p>Conforms to Reference Paper</p>
Competition Safeguards		
<p>Until end of monopoly,</p> <p>Incumbent Operators must observe MFN obligation with respect to provision of monopoly services</p> <p>Incumbent Operators cannot abuse its monopoly position when competing in liberalized markets</p>	<p>Telecom Law 11.2. Operator, provider dominating according to antimonopoly legislation in corresponding telecommunication service market must obey the following terms in activity:</p> <p>11.2.1. Dominating operator must create equal conditions on connection of nets and traffic exchange for interconnection with other operators doing same service to assure equal access to telecommunication service market;</p> <p>11.2.2. except cases set by legislation, dominating operator, provider cannot deny connection of another operator, provider to its net upon contract for interconnection goals</p>	<p>Telecom Law requires non-discrimination in interconnection to other operators.</p> <p>No provision requiring non-discrimination with respect to non-telecom service providers.</p> <p>Anti-Monopoly Law 5 covers state monopolies but the provisions do not require MFN treatment with respect to provision of monopoly services and do not clearly</p>

GATS OBLIGATIONS	RELEVANT AZERBAIJANI LAWS	COMPARATIVE ANALYSIS
		prohibit abuse of monopoly position in competitive markets.
<p>Measures must be in place to prevent anticompetitive practices of companies, which acting alone or together constitute a major supplier, including</p> <p>Prohibition against cross-subsidization</p> <p>Requirement for accounting or structural separation</p> <p>Prohibit improper use of confidential information and protect confidential information</p> <p>Prohibit improper use of confidential information and protect confidential information</p> <p>Public availability of technical and commercial information</p> <p>Prohibition on joint or collusive anti-competitive behavior</p> <p>Reference Paper Provision</p>	<p>Anti-Monopoly Law</p> <p>Art. 5 SOEs Does not include relevant provisions</p> <p>Art. 6 – “Branch” same</p> <p>Art. 7 – Local same</p> <p>Art. 8 Private Sector entities</p> <p>1) ungrounded limitation or termination of production of commodities that are in shortage with economy, people, individual economic subjects;</p> <p>2) change of production volume and withdrawal of commodities from circulation with the objective of creation of artificial deficit or increase of prices;</p> <p>3) establishment of ungrounded barriers to entry to the market and exit therefrom of other economic subjects;</p> <p>4) manipulations with prices (their increase, decrease or maintenance on one and the same level) with the objective of getting additional privileges in the market;</p> <p>5) refusal in sale or purchase of products in case of absence of alternative sellers or buyers of said products with the objective of creation of discrimination between economic subjects;</p> <p>6) creation of closed sale networks for economic subjects of wholesale and retail trade systems</p> <p>7) allowing discrimination with similar or comparable terms of conclusion of agreements that might restrict</p>	<p>It is not clear whether the provisions of Art 8 apply to state-owned enterprises, such as Aztelecom and Baktelecom.</p> <p>Art. 5 of the Anti-Monopoly does not include the relevant provisions.</p>

GATS OBLIGATIONS	RELEVANT AZERBAIJANI LAWS	COMPARATIVE ANALYSIS
	<p>competitive abilities of counteragents compared to other economic subjects;</p> <p>8) imposition of contractual terms which are unprofitable for counteragent or do not pertain to the subject of agreement;</p> <p>9) ungrounded refusal in conclusion of agreement with counteragent when there exist vacant productive facilities;</p> <p>10) violation of existing economic relations, without preliminary notification and consent of counteragent.</p>	
<p>Ability to enforce competition safeguards</p> <p>Reference Paper Provision</p>	<p>Anti-monopoly Law Art. 16, 17 and 16– there are civil and criminal penalties associated with violations both for the entity and its managers; the relevant body has right to obtain information</p>	<p>The Anti-Monopoly Law provisions are adequate.</p>
<p>Interconnection to Major Supplier</p>		
<p>At any technically feasible network point</p> <p>Under non-discriminatory terms, conditions and rates</p> <p>Of a quality no less favourable than provided for its own like services, those of non-affiliated suppliers or subsidiaries or other affiliates</p> <p>In a timely fashion</p> <p>At cost-oriented rates</p> <p>Sufficiently unbundled so that the supplier need not pay for network components it does not need</p> <p>On request, at network termination</p>	<p>Interconnection Regulation 3.1 operator with a license to render communications services has to apply to MCIT for connection to the general communication network</p> <p>Telecom Law 11.2.1: Dominant Operator Must Create Equal Conditions on Connection of Nets and Traffic Exchange for Interconnection with Other Operators Doing Same Service to Assure Equal Access to Telecommunication Service Market.</p> <p>11.2.2: Except Cases Set by Legislation, Dominant Operator Cannot Deny Connection of Another Operator to its Net upon Contract for Interconnection Goals</p> <p>12.1. Interconnection among operators is implemented</p>	<p>Telecom Law provides for non-discrimination in interconnection with the Incumbent Operators. This presumably includes terms, conditions and rates.</p> <p>No provisions regarding any of the other Reference Paper</p>

GATS OBLIGATIONS	RELEVANT AZERBAIJANI LAWS	COMPARATIVE ANALYSIS
<p>points other than those offered most users, subject to reasonable charges.</p> <p>Reference Paper Provision</p>	<p>upon contract (hereinafter – interconnection contract).</p> <p>12.2. Interconnection contract must include technical, economic issues set by corresponding executive power body and not against terms (internet connection fees, share division during transmission of traffic in mutual interconnection, payments for calls made to specialized first aid services etc) and other issues set by parts of the contract.</p> <p>12.4: Rules of Connection to and Use of Telecommunication Net of General Use Are Set by Corresponding Executive Power Body.</p>	<p>obligations.</p>
<p>Terms and conditions for interconnection are publicly available</p> <p>Reference Paper Provision</p>		<p>No provision found</p>
<p>Publish Reference Interconnection Offer (RIO) or make public all interconnection agreements</p> <p>Reference Paper Provision</p>		<p>No provision found</p>
<p>Make available an independent body for resolution of interconnection disputes upon request of one party to the dispute with ability to impose terms and conditions within a reasonable period of time</p> <p>Reference Paper Provision</p>	<p>Telecom Law 12.3. Operators must sign interconnection contract with every telecommunication net of general use no later than 2 months. If no agreement is gained with any operator for time given, interconnection contract must be signed between parts and corresponding executive power body during 7 working days considering object of dispute and upon terms set. Disputes concerning signing the interconnection contract are settled in court.</p>	<p>These provisions appear to establish MCIT as the dispute settlement body and provides authority to MCIT to impose terms and conditions as required.</p>

GATS OBLIGATIONS	RELEVANT AZERBAIJANI LAWS	COMPARATIVE ANALYSIS
	<p>Telecom Law Article 56. Settlement of disputes related to implementation of telecommunication activity</p> <p>56.1. Disputes among telecommunication activity subjects are settled in proper legal manner.</p> <p>56.2. Disputes among operators because of interconnection, special access and rented lines, channels are settled by corresponding executive power body. Decision adopted on the dispute is published and text of that is submitted to the parts of the dispute. The part not agreeing with the decision adopted is entitled to apply to the court.</p>	
Domestic Regulation		
<p>Maintain judicial, arbitral or administrative tribunals and procedures for prompt review of administrative decisions</p> <p>Tribunals must have enforcement power</p> <p>Procedures must be objective and impartial</p>	Telecom Law 17.4 The abuse of power by the authorities carrying out state supervisions over compliance with the legislation in the field of telecommunication may be appealed to the court.	No provision found on administrative (not judicial) review of MCIT decisions.
Administer all laws, rules, regulations in a reasonable, objective and impartial manner		No provision found
Qualification procedures and licensing requirements must be based on objective and transparent criteria, not more burdensome than necessary to ensure the quality of service and not a restriction on the supply of the service	Licensing law	The licensing criteria is clear
Universal Service		

GATS OBLIGATIONS	RELEVANT AZERBAIJANI LAWS	COMPARATIVE ANALYSIS
<p>Universal service obligations must be transparent, non-discriminatory, competitively neutral and not more burdensome than necessary to provide kind of universal service adopted</p> <p>Reference Paper Provision</p>	<p>Telecom Law 31.2. State guarantees doing of universal telecommunication service.</p> <p>31.4. The provision of universal telecommunication service shall be carried out by an operator/provider selected as a result of contest held in a way set by legislation, and if the contest is not held, by an operator who was charged with provision of universal telecommunication service on the basis of an agreement.</p> <p>31.5. The rule to allocate funds the operator provider needs to do universal telecommunication service or to reimburse (compensation) the funds spent for this purpose is set by corresponding executive power body.</p> <p>31.7. Tariffs and rules of calculation on universal telecommunication services provided by operators, providers are regulated upon contract signed between corresponding executive power body and operator.</p>	<p>Since these provisions are very general and have not been implemented, it is not possible to determine consistency with the Reference Paper.</p>
<p>Allocation of Scarce Resources – Spectrum, Numbering, Rights of Way</p>		
<p>Numbers</p> <p>Allocation must be done in an objective, timely, transparent and non-discriminatory way. MFN and national treatment apply</p> <p>Reference Paper Provision</p>	<p>Telecom Law 7.4. Allocation of number resources to telecommunication operator, provider is carried out by corresponding executive power body considering following principles and according to rules of allocation of number resources developed:</p> <p>7.4.1. enlarging existing logistics of operator, provider;</p> <p>7.4.2. not violating technologic activity regime of operator, provider;</p> <p>7.4.3. promoting healthy competition;</p> <p>7.4.4. not limiting right of users to use existing</p>	<p>The principles in the Telecom Law and Numbering Regulation are non-discriminatory, transparent and objective.</p>

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	<p>telecommunication services.</p> <p>7.5. Granting number resource can be denied only in cases set by legislation and complaint from this denial can be submitted to court.</p> <p>Numbering Regulation 12 Not later than 30 calendar days after the date when all documents shown in the 8th point of these Regulations are submitted to the ministry by the applicant, the ministry conducts the analysis of technical capabilities for allocation of number resources in the requested area and makes a decision on the allocation (when there is no reason for rejection) of number resources (if a shortage is revealed in the documents, then the date of removing the shortage is considered to be the date of final submission).</p>	
<p>Spectrum</p> <p>Allocation must be done in an objective, timely, transparent and non-discriminatory way. MFN and national treatment apply</p> <p>Current state of allocated frequencies must be publicly available (except for allocation for government use)</p> <p>Reference Paper Provision</p>	<p>Telecom Law 13.2, 13.3 – Executive Power Body</p> <p>Allocates Frequencies;</p> <p>Sets Rules for Use of Frequencies;</p> <p>Approves Spectrum Plan;</p> <p>Sets Fees for Spectrum Use</p> <p>Adopts Rules for Interference Prevention.</p> <p>Sec. 13.4 Lists Factors to Consider in Spectrum Allocation (Provision Unclear)</p>	<p>These provisions are too general so it is not possible to determine consistency with the Reference Paper.</p> <p>No provision found on publication of allocated frequencies.</p>
Independence of the Regulator		
Regulator must be independent from, and not accountable to, an operator		Since Aztelecom and Baktelecom

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of telecommunications services Reference Paper Provision		are owned by MCIT, this requirement is not met.
Regulator must be impartial Reference Paper Provision		No provision found.